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The ECCLblog

Greenhouse Gas Emissions Trading: A Market in Financial Instruments?

Posted on [June 16, 2014](#) by [Remus Valsan](#)

Last Monday (June 9) our Centre had the pleasure of hosting Alfonso Martínez-Echevarría y García de Dueñas, Professor of Commercial Law and Director of the Research Centre for Financial Markets Law at CEU San Pablo University, Madrid, Spain. Professor Martínez-Echevarría's thought-provoking paper tackled the legal nature of the gas emissions allowances under Spanish law. More specifically, the paper investigated whether the greenhouse gas emission allowances introduced by the Directive 2003/87/EC and implemented in Spain by Law 1/2005 should be considered financial instruments and therefore the trading of such allowances should fall under the supervision of the National Securities Market Commission (CNMV), Spain's national financial services industry regulator.

Professor Martínez-Echevarría emphasised the relevance of the issue of proper supervision by presenting the cautionary tale of the 2006 collapse of the Spanish philatelic investment schemes Afinsa and Forum Filatélico. CNMV regarded these schemes as falling outside its supervision, since their object of investment was not a financial product traded in a financial market. The narrow approach to the role of CNMV vis-à-vis these schemes facilitated the creation of a speculative bubble that eventually collapsed, causing losses to hundreds of thousands of investors.

The remaining part of the presentation focused on the legal nature of the emission allowances. Under Spanish law, the greenhouse gas emission allowance is regarded as a patrimonial subjective right, transferable subject to the specific provisions of Law 1/2005. According to article 2 of the Law 24/1988 on the Stock Market, the notion of financial instruments includes derivative contracts, which are sometimes used to acquire emission allowances. This in itself does not mean that greenhouse gas emission allowances are financial instruments, as the financial instrument is the derivative contract. Nevertheless, Professor Martínez-Echevarría argued, greenhouse gas emission allowances can be considered "atypical" transferable securities, and this categorization may allow us to treat them as financial instruments. This label would trigger a closer supervision by CNMV in order to prevent excessive speculation and increased systemic risk.

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